

March 3, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Room TW-A325
Washington, D.C. 20554

Filed via Electronic Filing

**Re: *Ex Parte* Presentation in the Proceeding Entitled "Nationwide
Programmatic Agreement Regarding the Section 106 National Historic
Preservation Act Review Process" – WT Docket No. 03-128**

Dear Ms. Dortch:

On Tuesday, March 2, 2004, the following individuals, representing the companies or associations indicated, all of which are members of the Wireless Coalition to Reform Section 106 (the "Coalition") met with Sheryl J. Wilkerson, Legal Advisor to Chairman Michael K. Powell, to discuss issues relevant to the above-identified proceeding:

Ben Almond Cingular
John Clark Perkins Coie LLP, Counsel
Jay Keithley PCIA – The Wireless Infrastructure Association
Andre J. Lachance Verizon Wireless
Harold Salters T-Mobile USA

In this meeting, the Coalition representatives described the negotiations that have occurred over the past three weeks involving members of the Coalition, the Advisory Council on Historic Preservation ("ACHP"), the National Conference of State Historic Preservation Officers ("NCSHPO"), other industry members, and other members of the Telecommunications Working Group ("TWG"). These negotiations have centered on the issue of the treatment in the above-referenced Nationwide Programmatic Agreement ("NPA") of properties whose eligibility for the National Register of Historic Places is possible but undetermined ("potentially eligible properties"). The Coalition members further explained the Coalition position that positive results from these negotiations should be incorporated into the NPA.

In that regard, the Coalition representatives reported that the parties to those negotiations had agreed to compromise on the issue of the treatment of potentially eligible properties by agreeing that the requirements for identification surveys for potentially eligible properties for visual effects could be removed from the NPA. The Coalition representatives also reported that the parties had reached agreement on several other points that the Coalition believed could therefore be included in the NPA.

The points of general agreement that were reached in discussions in the TWG with ACHP and NCSHPO included the following:

- (1) The NPA should not require surveys or identification efforts for visual effects.
- (2) The use of qualified professionals, for purposes of the identification of eligible properties readily ascertainable in the SHPO office, should be optional; and
- (3) The universe of eligible properties for which visual effects should be considered should be limited to those identified by the SHPO, and the research required to identify such properties should be limited to reviewing previous determinations of eligibility that are readily and clearly ascertainable and available to the public in SHPO's offices.

The Coalition representatives further discussed the concerns recently expressed by representatives in Congress about overly expansive interpretations of the scope of Section 106 of the National Historic Preservation Act ("NHPA"), the particular burdens that these interpretations place on wireless facilities, and how this problem might be addressed in the NPA.

In addition, at Ms. Wilkerson's request, Counsel sent to Ms. Wilkerson the information attached hereto as Attachment 1.

Respectfully submitted,



John F. Clark
Counsel to the Wireless Coalition to Reform Section 106

Attachment 1

-----Original Message-----

From: Clark, John F. - WDC
Sent: Tuesday, March 02, 2004 6:01 PM
To: Sheryl Wilkerson (E-mail)
Cc: Andrea Bruns (E-mail); Andy Lachance (E-mail); Ben G. Almond (E-mail); Connie Durcsak (E-mail); David Jatlow (E-mail); H. Anthony Lehv (E-mail); Harold Salters (E-mail); Jay Keithley (E-mail); Roger Sherman (E-mail); Tony Russo (E-mail)
Subject: Wireless Coalition Points for the NPA

Sheryl,

As you requested, I am sending you a list of the points we made in your meeting today with Ben Almond of Cingular, Andy Lachance of Verizon Wireless, Jay Keithley of PCIA, Harold Salters of T-Mobile USA and me, representing the Wireless Coalition to Reform Section 106. David Jatlow of AT&T Wireless, Anthony Lehv of American Tower Corporation, and Roger Sherman of Sprint were unable to attend

First, we discussed with you the points of agreement that had been identified in recent discussions with ACHP and NCSHPO and others in the Telecommunications Working Group ("TWG") relating to the issue of the treatment of potentially eligible properties for visual effects. These points of agreement are as follows:

- (1) The NPA should not require field surveys to identify potentially eligible properties where the only effects to those properties are visual effects.
- (2) Except for properties included in the National Register, or determined by the Keeper to be eligible, the universe of other properties potentially eligible for the National Register for which only visual effects must be considered should be limited to those previously identified as eligible by the SHPO or a federal agency, and records showing such determinations of eligibility should be readily and clearly available to the public in SHPO's offices.

- (3) Because the properties previously identified as probably eligible should be readily identifiable in the SHPO's office records, the use of qualified professionals for these identification purposes should not be required.

You also asked the Coalition's position on two additional issues, as follows:

- (1) Previously Disturbed Ground. The Coalition supports the definition of this term in the NPRM version of the NPA, which was carefully and painstakingly negotiated over several weeks by the TWG in 2003, and to which both ACHP and NCSHPO expressly agreed. That definition is as follows "ground that has been previously disturbed to a depth of (1) two feet or (2) six inches deeper than the general depth of the anticipated disturbance (excluding footings and similar limited areas of deep excavation), whichever is greater, and where no archeological
- (2) Pre-Submissions. The only submission to be made previous to submission of the SHPO Packet that was referred to in the NPRM version of the NPA was in Section IV dealing with tribal consultation. The Coalition does not object to this pre-submission as provided in the NPRM version of Section IV.A..

Please feel free to contact me with any questions you may have about these points.

Thank you again for taking the time to meet with us today to discuss these issues.

John

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